

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 26, 2008

STATE OF TENNESSEE v. GARRETT CHARLES ANDERSON

Direct Appeal from the Circuit Court for Blount County
No. C-15075 Michael H. Meares, Judge

No. E2007-02869-CCA-R3-CD - Filed September 2, 2008

The Defendant, Garrett Charles Anderson, pled guilty to felony evading arrest, driving under the influence, and violating the implied consent statute. The Defendant was sentenced to two years for the felony evading arrest conviction and to eleven months, twenty-nine days for the driving under the influence conviction. The sentences were to be served concurrently, for an effective sentence of two years, with thirty days to be served in jail and the remainder to be served on probation. Subsequently, the trial court issued a warrant alleging that the Defendant violated his probation, and, after a hearing, it revoked the Defendant's probation. On appeal, the Defendant claims the trial court abused its discretion by revoking his probation because there was not sufficient evidence that he violated his probation. Finding no error, we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and J.C. McLIN, JJ., joined.

J. Liddell Kirk, Knoxville, Tennessee, for the Defendant, Garrett Charles Anderson.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Matthew Bryant Haskell, Assistant Attorney General; Michael Flynn, District Attorney General; Tammy Harrington, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Facts

On September 13, 2004, pursuant to a plea agreement, the Defendant pled guilty to felony evading arrest, a Class E felony; driving under the influence, a Class A misdemeanor; and violation of the implied consent statute. The Defendant was sentenced to two years for the felony evading arrest conviction and to eleven months and twenty-nine days for the driving under the influence conviction. In addition, the Defendant's driving privileges were revoked for one year for the implied consent violation, and the Defendant was ordered to pay a \$350 fine for the driving under the influence conviction. The sentences were to be served concurrently, for an effective sentence of two years, with thirty days to be served in jail and the remainder to be served on probation. The probation order required that the Defendant report to jail on September 17, 2004, and commence serving his thirty day jail sentence at a rate of two days per week.

On June 1, 2005, a probation violation report was filed alleging that the Defendant had failed to report to his probation officer since February 15, 2005, and his residence was unknown; that the Defendant owed two months' probation fees; that the Defendant failed to make consistent payments on his court costs and fines; and that the Defendant failed to serve his thirty days in jail. Based on these allegations, the trial court issued a warrant for the Defendant.

At the probation revocation hearing the following evidence was presented: Beverly Kerr, the Defendant's probation officer, testified that February 15, 2005, was the last time that the Defendant reported to her. Kerr also testified that the Defendant did not serve his thirty day jail sentence, failed to pay his court-ordered fines and costs, and failed to pay his supervision fees.

The Defendant testified that he had experienced a bleeding disorder for the past several years, which required blood transfusions and consultations with gastroenterologists. As a result of these appointments, he found it difficult to maintain employment. When asked what happened to cause him to stop reporting to his probation officer, the Defendant replied, "My illness. I mean, I can't blame it on it, but I wasn't working, I was scared. I'm still scared. I bleed all the time. I—constantly. I have to have blood transfusions." On cross examination, the Defendant conceded that he had not completed his jail sentence.

The trial court revoked the Defendant's probation after finding that the Defendant failed to report to his probation officer; failed to serve his sentence; and failed to pay his fines, costs, and supervision fees. It is from this judgment that the Defendant now appeals.

II. Analysis

On appeal, the Defendant claims that the trial court abused its discretion by revoking his probation because the State did not provide sufficient evidence that he violated his probation. The State counters that the trial court did not abuse its discretion. We agree with the State.

A trial court may revoke a sentence of probation if it determines by a preponderance of the evidence that the conditions of probation have been violated. T.C.A. § 40-35-311(e). Upon finding that the defendant has violated the conditions of probation, the trial court may revoke the probation and either: (1) order incarceration; (2) order the original probationary period to commence anew; or (3) extend the remaining probationary period for up to two additional years. *State v. Hunter*, 1 S.W.3d 643, 644 (Tenn. 1999); *see* T.C.A. §§ 40-35-308, 310, 311. The defendant has the right to appeal the revocation of his probation and entry of his original sentence. T.C.A. § 40-35-311(e).

The decision to revoke probation is in the sound discretion of the trial judge. *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). The judgment of the trial court will be upheld on appeal unless there has been an abuse of discretion. *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Williamson*, 619 S.W.2d 145, 146 (Tenn. Crim. App. 1981). To find an abuse of discretion in a probation revocation case, an appellate court must determine that the record is void of any substantial evidence that would support the trial court's decision that a violation of the conditions of probation occurred. *Grear*, 568 S.W.2d at 286; *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980).

Here, the evidence preponderates in favor of the trial court's judgment finding that the Defendant violated the conditions of his probation. Ms. Kerr, the Defendant's probation officer, testified that she was unable to regain contact with the Defendant after he reported on February 15, 2005. She also testified that the Defendant failed to serve his jail sentence, failed to pay his court-ordered fines and costs, and failed to pay his supervision fees. The Defendant testified that he did not report to his probation officer because he was not working, and he was scared of going to jail. The Defendant conceded that he both failed to report and failed to serve his jail sentence.

On review, we conclude that the evidence supports revocation of the Defendant's probation. The testimony of both the Defendant and his probation officer clearly show by a preponderance of the evidence that the Defendant violated the conditions of his probation. Accordingly, the trial court did not abuse its discretion when it revoked the Defendant's probation, and ordered the Defendant to serve his sentences. The Defendant is not entitled to relief.

III. Conclusion

After carefully reviewing the record and the applicable law, we conclude that the trial court did not abuse its discretion when it revoked the Defendant's probation. We affirm the judgment of the trial court.

ROBERT W. WEDEMEYER, JUDGE